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IN THE

Supreme Court of the United States

No. 932

In the interest of
O. D., a child

FRANKLIN W. DURGIN AND CATHERINE DURGIN,
Petitioners

v.

STATE OF FLORIDA, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

FRANKLIN W. DURGIN AND
CATHERINE DURGIN, *Petitioners*
Postoffice Box 722
Sarasota, Florida
In proper persons
RICHARD W. ERVIN,
Office of Attorney General
Capitol Building
Tallahassee, Florida
Attorney for Respondent

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FRANKLIN W. DURGIN AND CATHERINE DURGIN,
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STATE OF FLORIDA, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

In the Interest of O. D., a child

To The Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

We, Franklin W. Durgin and Catherine Durgin, in the interest of our child, Orpha Durgin, respectfully pray for a writ of certiorari to the Florida Supreme Court to review the order of that Court in the above entitled cause.

(a) Reference is made to the Sarasota County, Florida Juvenile Court Order dated February 14, 1961 entitled "In the interest of Orpha Durgin, a child" in Case No. 2619; the opinion of the Florida District Court of Appeal for the 2nd District dated September 12, 1962

entitled "In the interest of O. D., a child" in Appeal No. 3241; and the order of the Supreme Court of Florida dated December 17, 1962 entitled "In the interest of O. D., a child" in Case No. 32,212; copies of which are appended.

(b) The grounds on which the jurisdiction of this Court is invoked are (1), the date of the order of the Supreme Court of Florida is December 17, 1962 and the time of its entry is December 17, 1962; (2) there are no orders respecting a rehearing or granting of an extension of time within which to petition for certiorari, and (3), the statutory provision believed to confer on the Supreme Court of the United States jurisdiction to review the order in question by writ of certiorari is 28 U. S. C., Section 1257 (3).

(c) The questions presented for review are:

(1) Was it due process and equal protection of law for the Sarasota County, Florida, Board of Public Instruction to refer Orpha Durgin, a 7-year-old child, to the Sarasota County Juvenile Court by complaining of "persistent truancy or unexcused absences" in its Juvenile Court Referral sheet showing *no home visits, no unexcused absences,* and *no three days written notice to a parent* as required by Section 232.17 (2) (c) and (2) (e) of the Florida Statutes?

(2) Was it due process and equal protection of law for a Juvenile Court employee to file a petition swearing Orpha Durgin is a delinquent child without making the investigation required by Section 39.04 of the Florida Statutes?

(3) Was it due process and equal protection of law for a Juvenile Court employee to issue a sum-

mons to a parent of Orpha Durgin without making the investigation required by Section 39.06 (2) of the Florida Statutes?

(4) Was it due process and equal protection of law for the Juvenile Court to deny the parents of Orpha Durgin their right to inspect the Juvenile Court file concerning their own daughter as provided by Section 39.12 (3) of the Florida Statutes?

(5) Was it due process and equal protection of law for the Juvenile Court to decide and enter its order adjudicating Orpha Durgin a dependent child on February 14, 1961—the day before the date scheduled by the Juvenile Court summons for the hearing, namely, February 15, 1961?

(6) Was it due process and equal protection of law for the Juvenile Court to deny the parents a hearing at the time and date scheduled in the summons, namely, 3:00 P. M., on February 15, 1961?

(7) Was it due process and equal protection of law for the Supreme Court of Florida to grant the State's motion to dismiss our petition for writ of certiorari on the ground said petition was not filed within the 60-day period but instead on the 62nd day, in spite of the fact that the 60th day was Sunday, the 61st day was a legal holiday, and Florida Appellate Rules 1.3 and 3.18 provide that in such cases the 60-day period shall run until the end of the 62nd day?

(d) The Constitutional provision is as follows:

Amendment XIV, Section 1. All persons born or naturalized in the United States, and subject to the juris-

diction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Texts of pertinent statutes and rules are in Appendix.

(e) (f) Statement of the Case:

This case concerns the actions of officials of the Sarasota County Board of Public Instruction and Juvenile Court in labeling our innocent 7-year-old daughter a juvenile delinquent (Petition.—Record Page 37 or see Appendix), leaving the delinquency charge permanently in the record without ever acting on it, and then adjudicating our daughter a dependent of the Juvenile Court (Order.—Record Page 38 or see Appendix), on trumped-up charges of truancy using a Board of Public Instruction Referral sheet (Record Page 29 or see Appendix) showing *no unexcused absences* from school but including excused absences (Referral Sheet.—Record Page 29 or see Appendix); due to an emergency trip by ourselves and our daughter to visit the distant hospital bedside of her 80-year-old grandmother dying of cancer to see her alive for the last time. *On February 7, 1961*, the same day that we, the parents, notified the Sarasota County Board of Public Instruction that we had transferred our daughter from a public school to a private school, the Board sent the Sarasota County Juvenile Court the Referral sheet (Record Page 29 or see Appendix) charging our 7-year-old daughter Orpha with "persistent truancy or unexcused absences." The Referral sheet showed no home visits, a wrong home ad-

dress. no *unexcused* absences and no 3-day written notice to either parent as required by Sections 232.17 (2) (c) and 232.17 (2) (e) of the Florida Statutes. (See Appendix). Immediately. an assistant juvenile counselor filed a Petition (Record Page 37 or see Appendix) dated *February 7. 1961* in the Juvenile Court. based solely on the Referral sheet. (Record Page 29 or see Appendix). alleging under oath that Orpha Durgin at the age of 7 years was a delinquent. without making the investigation required by Section 39.04 of the Florida Statutes.—(See Appendix).

Thereupon. the Juvenile Counselor issued a Summons (Record Page 30 or see Appendix) dated *February 7. 1961* based solely on the Petition. alleging that Orpha Durgin was a delinquent child and requiring the appearance of the child and the parents in Juvenile Court at 3:00 P. M. on February 15. 1961. without the investigation required by Section 39.06 (2) of the Florida Statutes. (See Appendix)

On February 13. 1961. we. the parents received the Summons. went to the Juvenile Court to inspect the file and to read the Petition but the Juvenile Court secretary and then the Juvenile Counselor told us the file was confidential (Burns Memorandum.—Record Page 31) and denied us our right to inspect the file of our own daughter under Section 39.12 (3) of the Florida Statutes. (See Appendix). Following this. the Juvenile Judge refused to let us see the file. holding his hand firmly on the file resting on his desk and covering everything except a list of dates which he said were absences from school. We. the parents. appeared in Juvenile Court an hour before the time scheduled in the Summons. namely. 3:00 P. M. on February 15. 1961. (Burns Memorandum.—page 32). were handed Orders (Record Page 38 or see

Appendix) dated the previous day, February 14, 1961, adjudicating our daughter a dependent of the Juvenile Court, and were told by the Juvenile Judge there would be no hearing and to leave because the Juvenile Judge had already decided the case and filed the Order the day before. When we protested this denial of our hearing, the Juvenile Judge stated (Burns Memorandum—page 32) we had already been given our hearing on Febrtuary 13, 1961 at the time we asked for and were denied our right to inspect the file. Thereafter, we, the parents, made several more trips to the Juvenile Court in an attempt to inspect the file concerning our own child but each time we were denied our right to look at the file and it became necessary for us, the parents, on February 24, 1961, to prepare and file our Notice of Appeal of the Juvenile Court Order of February 14, 1961 without having read the file.

The federal questions of due process and equal protection of the laws were raised in the original proceedings by the action of the Juvenile Court in unlawfully refusing to permit us to inspect the Court file containing the trumped-up charge of delinqnecy against our own 7-year-old daughter, by the action of the Juvenile Court in denying us a hearing on the day and at the time scheduled by the Juvenile Court in its Summons and by the action of the Juvenile Court in entering its order adjudicating our daughter a dependent on the day before the date scheduled by the Juvenile Court in its Summons. These unlawful actions and our objections thereto are described in the Burns Memorandum (Record Page 37), and are corroborated by the Summons (Record Page 30) and the Order (Record Page 38), copies of which are also appended to this petition.

Concerning our appeal of the Juvenile Court Order

dated February 14, 1961, the Florida District Court of Appeal, 2nd District, on September 12, 1962 filed its opinion consisting of the one word "Affirmed." By so affirming, the District Court held in effect that it was due process and equal protection of the laws (1) for a Juvenile Court employee to swear out a petition charging our daughter is a juvenile delinquent without the investigation required by law, (2) for a Juvenile Court employee to issue the summons without the investigation required by law, (3) for the Juvenile Court to refuse to let us inspect the file concerning our own daughter as required by law, (4) for the Juvenile Court to deny us the hearing scheduled in the Juvenile Court summons, and (5) for the Juvenile Court to decide the case and file the Order the day before the date scheduled by the Juvenile Court for the hearing.

On November 13, 1962, we, the parents, filed in the Supreme Court of Florida, our petition for writ of certiorari to the District Court of Appeal, again raising the federal questions of due process and equal protection of the laws in our petition (Record Page 4) and in our brief (Record Pages 11 and 12). Incidentally, on obtaining the transcript of record on appeal from the District Court, we discovered that the transcript had been falsified and brought this crime to the attention of the Florida Supreme Court by "Motion to Conform Record and for Investigation" (Record Pages 25-27) filed Nov. 29, 1962, but the Florida Supreme Court failed to act concerning this falsification which obviously was committed with the intention of depriving us of due process of law.

On November 21, 1962, the Florida State Attorney-General filed in the Florida Supreme Court a motion to dismiss our petition for writ of certiorari on the ground our petition was filed on November 13, 1962, the 62nd

day by mathematical computation following rendition of the opinion by the District Court of Appeal on September 12, 1962. By letter dated November 21, 1962, the Clerk of the Supreme Court of Florida notified us that the State's motion to dismiss would be submitted to the Court for disposition *without oral argument* (*Record page 24*). On December 17, 1962 the Florida Supreme Court granted the motion to dismiss and by so doing denied us and our child the protection of its own Appellate Rules, namely, Rules 1.3 and 3.18 (See Appendix).

In the present instance, the 60th day following rendition of the lower Court's decision on September 12, 1962 fell on Sunday, November 11, 1962, making Monday, November 12, 1962, a legal holiday according to Florida Appellate Rule 1.3 and allowing timely filing of our petition on Tuesday, November 13, 1962 in accordance with Florida Appellate Rule 3.18. Actually, our petition would have been filed *even before November 13, 1962* had not the Tallahassee Postmaster been given instructions by the State to hold all mail until the day following the legal holiday.

(g) not applicable. (h) There are special and important reasons why this Honorable Court should grant a review on writ of certiorari. The Florida Supreme Court has itself raised a federal question under the 14th Amendment by denying us the protection of its own Appellate Rules and this question may be decided only by the Supreme Court of the United States. Moreover, this case is a typical example of arbitrary, unreasonable, and even criminal prosecution of a law-abiding family and of wilful and malicious labeling an innocent 7-year-old child as a juvenile delinquent on trumped-up charges of truancy by empoying unlawful and unconstitutional methods and procedures. Several years ago, the Sara-

sota County Bar Association adopted and published a resolution condemning the U.S. Supreme Court, and ever since, the local government has been operated with complete disregard to rights guaranteed by the U. S. Constitution, in the belief that it is impossible for local citizens to obtain relief against State actions in the U. S. Supreme Court. On April 26, 1962, Florida Governor Bryant criticized the U. S. Supreme Court before 1,000 Florida lawyers at the 12th Annual Convention of the Florida Bar in Hollywood, Florida. Newspaper accounts quote Governor Bryant as telling these lawyers that the U. S. Supreme Court is "destroying concepts of the U. S. legal and political system." The authority of the Federal Supreme Court is being defied by Florida officials from the lowest to the highest, and by the Florida Attorney General who is counsel for the respondent in this case. Unless the U. S. Supreme Court wishes to let this case stand as proof that Florida officials can violate the U. S. Constitution at will, and deprive law-abiding citizens of their rights under the U. S. Constitution, it is imperative that the U. S. Supreme Court exercise its authority by granting our petition.

It is believed that the Florida Courts have decided these Federal questions of denial of due process and denial of equal protection of the law in ways not in accord with the following decisions of the Supreme Court of the United States:

Hebert v. Louisiana 272 U. S. 312, 47 S. Ct. 103; holding that the due process clause requires that State action, whether through one agency or another, shall be consistent with the fundamental principles of liberty and justice which lie at the base of all of our civil and political institutions.

Brown v. Mississippi, 297 U. S. 278, 56 S. Ct. 461; and

Chambers v. Florida. 309 U. S. 227. 60 S. Ct. 472: holding that due process under the Fourteenth Amendment includes the right to a fair trial.

Meyer v. Nebraska. 262 U. S. 390. 43 S. Ct. 625: holding that among the fundamental personal rights protected by the 14th Amendment from impairment by the States is the freedom of the individual family to establish a home and bring up children.

W. Va. State Board of Education v. Barnette. 319 U. S. 624. 63 S. Ct. 1178: holding that the 14th Amendment protects the citizen against the State itself and all of its creatures.—Boards of Education (and Juvenile Courts) not excepted.

Franklin W. Durgin. Petitioner
Catherine Durgin. Petitioner
In proper persons

BOARD OF PUBLIC INSTRUCTION
SARASOTA COUNTY
Sarasota, Florida

JUVENILE COURT REFERRAL
To: JUVENILE COURT OR SARASOTA COUNTY, FLORIDA

Date February 7, 1961

Child's Name Orpha Durgin. Race W. Sex Female. Parent's or Guardian's Name. Mr. and Mrs. Franklin W. Durgin. Address 823 S. Orange Ave., Apt. 2. Telephone RI 66901. Child's Birthdate 12 27 53. Name of School. Central. Grade 2.

The above named child is referred to the Juvenile Court on the complaint of PERSISTENT TRUANCY or UNEXCUSED ABSENCES. She was absent from school without a legal excuse on the following dates:

MONTH	Dates of Month	MONTH	Dates
Aug.		Feb.	1. 2. 3. 6. 7
Sept.		March	
Oct.	25	April	
Nov.	1. 17. 18. 21. 22. 23. 28. 29. 30	May	
Dec.	1. 2. 5	June	
Jan.	25. 26. 27. 30. 31	July	

Total absences to date this year 23.

Total *unexcused* absences to date this year

Home visits were made on the following dates (include in-school contacts with parents.)

DATE	RESULT
2 7 61	Telephone conversation

....

....

....

If this child is a discipline problem, give specific instance, date, and action taken by school in the space below.

Additional Remarks:

/s/ Basil S. White
Signature

IN THE JUVENILE COURT, SARASOTA COUNTY FLORIDA

IN THE INTEREST OF Orpha Durgin—A Child

No. 2619 PETITION

TO THE JUDGE OF THE ABOVE ENTITLED COURT:

The undersigned represents that Orpha Durgin, a child of the age 7 years, whose residence is *823 South Orange Avenue, Sarasota, Florida* is a delinquent child because of the following facts: It is alleged by Mr. Basil White, Director of Pupil Welfare and Attendance for the Board of Public Instruction, that the above named child has missed the following school days without a legal excuse:

October 25
November 1, 17, 18, 21, 22, 23, 28, 29, and 30
December 1, 2 and 5
January 25, 26, 27, 30 and 31.
February 1, 2, 3, 6 and 7.

That the names and residences of the parents or legal custodians of said child are as follows:

Mr. and Mrs. Franklin W. Durgin, 823 S. Orange Ave., Sarasota.

/s Anne W. Jones
Assistant Counselor

STATE OF FLORIDA
COUNTY OF SARASOTA

The above named *Ann W. Jones* being first duly sworn, deposes and says that the allegations of the foregoing petition by such person subscribed are true, according to such person's information and belief.

Sworn to and subscribed before me this 7th day of Feb. 1961.

IN THE JUVENILE COURT IN AND FOR SARASOTA COUNTY

State of Florida

In the Interest of. Orpha Durgin A Child Case No. 2619.

SUMMONS
(39.06)

STATE OF FLORIDA.

To *Franklin Durgin, 823 South Orange Ave., Apartment 2, Sarasota, Fla. Greetings:*

Whereas Ann W. Jones residing in Sarasota County, Florida has filed in this court petition alleging under oath that *Orpha Durgin* is a *delinquent* child within the intent and meaning of Chapter 26.880 Laws of Florida, Acts of 1951 and that said child is in care and custody of you, the said *Franklin Durgin* and requesting that a summons issue in due course requiring that you bring said child before this court to be dealt with according

to law.

NOW, therefore, these are to cite and notify you to appear with said child before this court at the Court House in Sarasota, Florida, at the hour of 3:00 o'clock P.M. on the 15th day of February, 1961.

HEREIN FAIL NOT UNDER PENALTY OF BEING HELD IN CONTEMPT OF COURT

WITNESS my hand as Judge and the Seal of the Juvenile Court in and for Sarasota County, Florida this 7th day of February, 1961.

John T. Graham
Judge of the Juvenile Court
By s M. S. Burns

IN THE JUVENILE COURT in and for SARASOTA COUNTY, FLORIDA

In the interest of: *Orpha Durgin* A Child No. 2619

ORDER OF COURT

WHEREAS *Ann W. Jones*, Counselor of said County has filed in this Court *her* petition under oath alleging that *Orpha Durgin* is a *delinquent* child within the intent and meaning of Chapter 39 of the Laws of Florida, as amended and said child having been brought before the Court, and due examination held: It is ordered and adjudged as follows: That Orpha Durgin is hereby adjudicated a dependent child and that the parents of Orpha Durgin, Mr. an Mrs. Franklin W. Durgin, are hereby Ordered to assure the attendance of Orpha Durgin in a school pursuant to all the Florida State Statutes and if either parent of said child interferes with her school attendance for other than the legal reasons as stated in

the Florida State Statutes they will be held in contempt of this Court.

WITNESS my hand as Judge of the Juvenile Court in and for Sarasota County, Florida, this 14th day of February A. D. 1961.

s John T. Graham
Judge of the Juvenile Court

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA—SECOND DISTRICT
JULY TERM, A. D. 1962

IN THE INTEREST OF O. D., a child.

Opinion filed September 12, 1962.

Appeal from the Juvenile Court for Sarasota County, Robert E. Hensley, Judge.

Franklin W. Durgin and Catherine Durgin, Sarasota, in propriae personae for appellant.

Richard W. Ervin, Attorney General, Tallahassee, Robert R. Crittenden, Assistant Attorney General, Lakeland, for Appellee.

PER CURIAM.

Affirmed.

KANNER, A.C.J., SMITH and WHITE, JJ., Concur

IN THE SUPREME COURT OF FLORIDA
JULY TERM, A.D. 1962
MONDAY, December 17, 1962

IN THE INTEREST OF O. D.—a Child
FRANKLIN W. DURGIN and
CATHERINE DURGIN, Petitioners

vs.

RICHARD W. ERVIN. ATTORNEY GENERAL. and ROBERT E. CRITTENDEN. ASSISTANT ATTORNEY GENERAL—Respondents.

CASE NO. 32.212

The respondent in the above entitled cause has filed a motion to dismiss the Petition for Writ of Certiorari heretofore filed in this cause on November 13. 1962 and upon consideration thereof. it is ordered that said motion be and the same is hereby granted. and said Petition is dismissed.

A True Copy
TEST:
Guyte P. McCord
Clerk Supreme Court

PERTINENT PARTS OF FLORIDA STATUTES

Section 232.17(2)(c) GIVE WRITTEN NOTICE.—Under the direction of the County superintendent the attendance assistant shall give written notice. either in person or by registered mail. to the parent when no valid reason is found for a child's non-enrollment or absence from school. requiring enrollment or attendance within three days from the date of notice.

Section 232.17(2)(e) VISIT HOME—The attendance assistant shall visit promptly the home of each child of school age in his attendance district not in attendance upon the school and any child who should attend the Florida State School for the deaf and the blind. and who

is reported as not enrolled in that school or as absent without excuse. If no valid reason is found for such non-enrollment or absence from such school or schools he shall give written notice to the parent, requiring the child's enrollment or attendance as prescribed above . . . On refusal or failure of the parent to meet such requirement, the attendance assistant shall report the same to the county superintendent, and that official shall proceed to take such acton as is prescribed in section 232.-19(2).

Chapter 232.19 (2) NONENROLLMENT AND NONATTENDANCE CASES.—In each case of nonenrollment or of nonattendance upon the part of a child who is required to attend some school, when no valid reason for such nonenrollment or nonattendance is found, the county superintendent shall institute a criminal prosecution against the child's parent.

Section 39.04 INVESTIGATION.—Upon receiving reliable information that a child within the County is a dependent or a delinquent child, the Counselor or an Assistant Counselor shall investigate and if the investigation discloses reaonable ground for belief that the child is a dependent or delinquent child, and no petition with reference to the child has been filed in the Juvenile Court, shall file such a petition.

Section 39.06(2) Upon the filing of a petition containing allegations of facts which, if true would constitute the child therein named a dependent or delinquent child the Court shall investigate and, if those facts appear to be true, a summons reciting briefly the circumstances of the petition shall be issued.

Section 39.12(3) Juvenile Court records shall not be

public records, and shall not be open to inspection by the public. Records shall be inspected only upon order of the judge, by persons deemed by the judge to have a proper interest therein, except that a child and the parents or legal custodians of the child and their attorneys shall always have the right to inspect and copy any official record pertaining to the child.

PERTINENT PARTS OF FLORIDA APPELLATE RULES Rule 1.9 DEFINITIONS.—"Legal Holiday" means New Year's Day, Good Friday, Memorial Day (May 30), July 4, Labor Day, General Election Day, any state-wide primary election day, *Veteran's Day* (*November 11*), Thanksgiving Day, Christmas and *any Monday immediately following a Sunday upon which one of the foregoing holidays falls.*

Rule 3.18 COMPUTATION OF TIME.—In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event or default from which the designated period of time begins to run is not to be included. *The last day of the period so computed shall be counted, unless it is a Saturday, Sunday or a legal holiday, in which event the period shall run until the end of a next day, which is neither a Saturday, Sunday nor a legal holiday.* When the period of time prescribed or allowed shall be less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. A half holiday shall be considered as any other day and not as a holiday. If an act be required to be performed on a day certain and such day shall fall on a Saturday, Sunday or legal holiday, the act shall be performed on the next day which is neither a Saturday, Sunday nor a legal holiday.